

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
D.T.V., LLC)	File No.: EB-FIELDNER-13-00006557
)	NAL/Acct. No.: 201432400003
Licensee of Station WPHA-CD)	FRN: 0013224662
Philadelphia, Pennsylvania)	Facility ID No.: 72278

MEMORANDUM OPINION AND ORDER

Adopted: August 16, 2016

Released: August 16, 2016

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We dismiss the Petition for Reconsideration filed by D.T.V., LLC (D.T.V.), licensee of Class A Television Station WPHA-CD (Station WPHA or the Station) in Philadelphia, Pennsylvania, seeking reconsideration of the *Forfeiture Order* issued by the Commission.¹ Among other things, the Commission concluded in the *Forfeiture Order* that D.T.V. did not provide adequate justification that a downward adjustment to the forfeiture amount was warranted based on an inability to pay.² The Commission also found that, even if D.T.V. had demonstrated its inability to pay the forfeiture amount, the gravity of D.T.V.'s violations would militate against any reduction of the forfeiture.³ D.T.V. now seeks reconsideration of the decision in the *Forfeiture Order* not to reduce the forfeiture amount.

II. BACKGROUND

2. In April 2014, the Commission issued the Notice of Apparent Liability for Forfeiture in this proceeding, proposing an \$89,200 forfeiture against D.T.V. for apparently failing to make the Station available for inspection by Commission agents on multiple occasions, maintain a fully staffed main studio for the Station, and operate the Station's transmitter from its authorized location.⁴ On August 17, 2011, and again on September 30, 2011, agents from the Philadelphia Office attempted to inspect the Station during normal business hours. Despite repeated contacts with the Station Manager as well as multiple attempts to contact D.T.V.'s sole principal for assistance in obtaining access to his Station's main studio, the agents were refused entry to the main studio to conduct an inspection.⁵

3. The Commission noted in the *Forfeiture Order* that "D.T.V.'s repeated refusals to make the Station available for inspection 'threaten[ed] to compromise the Commission's ability to fully investigate potential violations of its rules . . . [and] prevented the agents from conducting a

¹ *D.T.V., LLC*, Forfeiture Order, 31 FCC Rcd 2650 (2016) (*Forfeiture Order*).

² *Forfeiture Order*, 31 FCC Rcd at 2657-58, paras. 19-21.

³ *Forfeiture Order*, 31 FCC Rcd at 2658-59, para. 22.

⁴ *D.T.V., LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5483 (2014)(*NAL*).

⁵ *NAL*, 29 FCC Rcd at 5486, para. 11.

comprehensive inspection of the Station's facilities and filings."⁶ The agents could not assess whether D.T.V. had met its obligations as a broadcast licensee, including its compliance with Rules aimed at protecting public safety like the Emergency Alert System, because they were denied access to the Station.⁷ The Commission noted that D.T.V. "exhibited a blatant disregard of, and contempt for, the Commission's authority."⁸ The Commission concluded further that D.T.V.'s repeated failure to allow inspection, after being reminded of that obligation by the agents, was egregious.⁹

4. In March 2016, the Commission adopted the *Forfeiture Order*, finding that the full forfeiture amount of \$89,200 proposed in the *NAL* against D.T.V. is warranted.¹⁰ Specifically, the Commission considered and rejected D.T.V.'s argument that the forfeiture amount should be adjusted downward based on its claims of its inability to pay.¹¹ Moreover, the Commission also concluded that, even if D.T.V. had adequately demonstrated an inability to pay the forfeiture amount, the repeated and egregious nature of D.T.V.'s rule violations would weigh against any downward adjustment, including an adjustment based on a claim of inability to pay.¹²

5. On April 28, 2016, D.T.V. filed a Petition for Reconsideration of the *Forfeiture Order*.¹³ For purposes of its Petition, D.T.V. does not contest the conclusions in the *Forfeiture Order* that it violated the Commission's rules, and that those violations were egregious.¹⁴ Rather, D.T.V. argues that the penalty assessed in the *Forfeiture Order* should be reduced based on its inability to pay. For reasons discussed below, we dismiss D.T.V.'s Petition.

III. DISCUSSION

6. Section 1.106(p) of the Commission's rules delegates authority to the Bureaus to act on petitions for reconsideration that "plainly do not warrant consideration by the Commission."¹⁵ In particular, Section 1.106(p)(1) authorizes the Enforcement Bureau (Bureau) to dismiss petitions for reconsideration that "[f]ail to identify any material error, omission, or reason warranting reconsideration."¹⁶

⁶ *Forfeiture Order*, 31 FCC Rcd at 2655, para. 14.

⁷ *Forfeiture Order*, 31 FCC Rcd at 2655-2656, para. 14.

⁸ *Forfeiture Order*, 31 FCC Rcd at 2656, para. 14, quoting *NAL* at 29 FCC Rcd at 5488, para. 18.

⁹ *Forfeiture Order*, 31 FCC Rcd at 2656, para. 14.

¹⁰ *Forfeiture Order*, 31 FCC Rcd at 2659, para. 23.

¹¹ *Forfeiture Order*, 31 FCC Rcd at 2657-58, paras. 19-21. In the *Forfeiture Policy Statement*, the Commission set forth guidelines for forfeiture amounts in enforcement proceedings. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999). The Commission retains the discretion to issue a higher or lower forfeiture than provided in the *Forfeiture Policy Statement* based on the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

¹² *Forfeiture Order*, 31 FCC Rcd at 2658-59, para. 22.

¹³ *D.T.V., LLC*, Petition for Reconsideration (April 28, 2016) (on file in EB- FIELDNER-13-00006557 (Petition)).

¹⁴ Petition at 1.

¹⁵ 47 C.F.R. § 1.106(p).

¹⁶ 47 C.F.R. § 1.106(p)(1).

7. We dismiss D.T.V.'s Petition pursuant to Section 1.106(p)(1) of the Commission's rules.¹⁷ The *Forfeiture Order* noted the extensive precedent in which it had rejected claims of inability to pay in cases of repeated or otherwise egregious violations.¹⁸ The Commission also emphasized in the *Forfeiture Order* that D.T.V.'s violations were repeated and egregious, and that nothing in the record in that proceeding warranted any leniency or mitigation of the forfeiture amount.¹⁹

8. Thus, regardless of whether D.T.V. has shown that the Commission erred in the inability-to-pay determination in the *Forfeiture Order*, D.T.V. has not shown that correcting any such error would affect the forfeiture amount adopted in that *Order*. Consequently, D.T.V. has not shown that any such error is "material" within the meaning of Section 1.106(p)(1).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 405 of the Communications Act of 1934, as amended (Act) and Section 1.106(p)(1) of the Commission's rules, the Petition for Reconsideration filed by D.T.V., LLC is hereby DISMISSED.²⁰

10. IT IS FURTHER ORDERED that, pursuant to Section 503(b) of the Act and Sections 1.80 of the Commission's rules,²¹ D.T.V., LLC IS LIABLE FOR A MONETARY FORFEITURE of \$89,200 for willfully and repeatedly violating Section 73.1225(a) and 73.1350(a) of the Commission's rules and willfully violating Sections 73.1125(a) of the Commission's rules.²²

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within fifteen (15) calendar days after the release date of this Memorandum Opinion and Order.²³ This matter has been referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁴ D.T.V., LLC shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. D.T.V., LLC shall send electronic notification of payment to Janet.Moran@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call

¹⁷ 47 C.F.R. § 1.106(p)(1).

¹⁸ *Forfeiture Order*, 31 FCC Rcd at 2658, para. 22, citing *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (Enf. Bur. 2013).

¹⁹ *Forfeiture Order*, 31 FCC Rcd at 2658-59, para. 22.

²⁰ 47 U.S.C. § 405; 47 C.F.R. § 1.106(p)(1).

²¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

²² 47 C.F.R. §§ 73.1125(a), 73.1225(a), 73.1350(a).

²³ 47 C.F.R. § 1.80.

²⁴ 47 U.S.C. § 504(a).

²⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to D.T.V., LLC, 1903 South Greeley Highway #127, Cheyenne, Wyoming 82007, and to Peter Tannenwald, counsel for D.T.V., LLC, at Fletcher, Heald, & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

²⁶ See 47 CFR § 1.1914.